

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AVELARDO RIVERA and YASMINE
ROMERO, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

AMAZON WEB SERVICES, INC.,
a Delaware corporation,

Defendant.

No. 2:22-CV-00269-JHC

STIPULATED MOTION AND
ORDER MODIFYING DEADLINES

NOTE ON MOTION CALENDAR:
JULY 25, 2024

Pursuant to Local Civil Rules 7(d)(1) and 10(g), defendant Amazon Web Services, Inc. (“AWS”) and Plaintiffs Avelardo Rivera and Yasmine Romero (“Plaintiffs”) (collectively, the “Parties”), jointly move the Court for a modification and extension of the current discovery and class certification deadlines. In support of this stipulated motion, the Parties state as follows:

1. On April 23, 2024, the Parties filed a Joint Status Report, including proposed deadlines for expert discovery and class certification briefing, which the Court adopted. *See* Dkts. 196, 199.

2. On May 15, the Parties filed a Stipulated Motion and [Proposed] Order for Extension of Fact Discovery Deadlines, which the Court granted. *See* Dkts. 200, 201.

3. Accordingly, fact discovery as between the Parties closed on June 17, while fact discovery as to third parties is scheduled to close on August 1.

1 4. With respect to third-party fact discovery, AWS identified tens of thousands of
2 AWS Rekognition customers through its discovery responses and document productions. *See*,
3 *e.g.*, AWS_00009345, AWS_00009868, AWS_00009869. Plaintiffs served third-party discovery
4 requests seeking information from several of those AWS customers.

5 5. Plaintiffs informed AWS and the Court that they may seek to modify the current
6 proposed class definition based on information obtained during the ongoing third-party fact
7 discovery period. *See, e.g.*, Dkt. 187 at 4 n.2 (“Based on Plaintiffs’ investigation, Plaintiffs may
8 [re]define the class as Illinois end users of only certain AWS customers: ProctorU and large
9 customers who likely (if not certainly) have Illinois end users.”); *compare* Dkt. 88 ¶ 52 (Second
10 Amended Complaint defining the proposed class as “[a]ll Illinois residents who had their
11 biometric information or biometric identifiers collected, captured, received, possessed, or
12 otherwise obtained by Amazon’s Rekognition service and stored in AWS’s servers”).

13 6. On May 17, AWS served written discovery requests on Plaintiffs. Among other
14 things, AWS’s written discovery requests asked Plaintiffs to describe the modified class
15 definition or definitions that Plaintiffs may or will propose in this matter.

16 7. On June 17, Plaintiffs served their responses and objections to AWS’s discovery
17 requests. In those responses and objections, Plaintiffs stated they are not yet able to describe the
18 modified class definition or definitions they may or will propose because third-party fact
19 discovery is ongoing and that discovery may impact whether and how Plaintiffs may seek to
20 modify the class definition proposed in the Second Amended Complaint.

21 8. On June 27, the Parties met and conferred to discuss the most efficient way to
22 proceed with discovery and class certification briefing given the procedural posture discussed
23 above. The Parties agreed that the current case schedule should be amended for two reasons,
24 both of which constitute good cause to amend the current case schedule.

25 9. First, Plaintiffs’ position is that they must complete third-party fact discovery with
26 AWS’s customers before they can determine which customers’ end users can appropriately be

1 included in the class. Upon completion, Plaintiffs will be able to define the class (or classes) they
2 will ask the court to certify under Rule 23.

3 10. Second, AWS's position is that it must be allowed to conduct fact and expert
4 discovery *after* Plaintiffs have identified their proposed modified class definition or definitions.
5 Otherwise, AWS would be unduly prejudiced because it would have no opportunity to conduct
6 fact and expert discovery based on the class or classes for which Plaintiffs intend to seek
7 certification. AWS has identified tens of thousands of AWS customers in discovery, but AWS
8 has no way of knowing, at this stage of the case, which end users of which AWS customers will
9 fall within the scope of Plaintiffs' proposed class or classes. For the same reason, requiring AWS
10 to conduct all fact and expert discovery in support of its class certification defenses *before*
11 Plaintiffs have identified the class or classes they will seek to certify would be wasteful and
12 inefficient.

13 11. Therefore, the Parties jointly request that the Court modify the current case
14 schedule by:

- 15 i. Staying all existing expert discovery deadlines.
- 16 ii. Staying all existing class certification briefing deadlines.
- 17 iii. Granting Plaintiffs leave to identify (through an amended complaint or
18 supplemental interrogatory responses), no later than August 8, the class
19 definition or definitions for which they intend to seek certification. For the
20 avoidance of doubt, if Plaintiffs decide to seek certification of a class
21 composed of end users of certain AWS Rekognition customers, then Plaintiffs
22 must identify those AWS customers.
- 23 iv. Granting AWS leave to conduct party and third-party fact discovery related to
24 AWS's class certification defenses and Plaintiffs' August 8 class definition or
25 definitions, and granting Plaintiffs leave to conduct third-party fact discovery
26

1 related to AWS's class certification defenses and Plaintiffs' August 8 class
2 definition or definitions.

- 3 v. Ordering the Parties to file, no later than August 15, a joint stipulation
4 proposing deadlines for (i) AWS to conduct party and third-party fact
5 discovery related to AWS's class certification defenses and Plaintiffs' August
6 8 class definition or definitions, and for Plaintiffs to conduct third-party fact
7 discovery related to AWS's class certification defenses and Plaintiffs' August
8 8 class definition or definitions; (ii) the Parties to complete expert discovery
9 regarding class certification; and (iii) the Parties to complete class certification
10 briefing.

11 12. Under Federal Rule of Civil Procedure 16(b)(4), "[a] schedule may be modified
12 only for good cause and with the judge's consent." Good cause exists here because, as described
13 above, the Parties' proposed approach accommodates Plaintiffs' need to finalize a class
14 definition or definitions after the current third-party fact discovery period ends, on one hand, and
15 AWS's need to conduct discovery in support of its class-certification defenses after learning the
16 class or classes for which Plaintiffs will seek certification, on the other hand.

17 13. Further, the requested modification of the schedule is timely because the Court
18 has already granted the Parties leave to conduct third-party fact discovery until August 1, expert
19 discovery has not begun, and the Parties have not started class certification briefing. *See*
20 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (requests for extensions
21 of time made before the applicable deadline has passed should normally be granted in the
22 absence of bad faith or prejudice).

23 14. Accordingly, the Parties respectfully request that the current case schedule be
24 modified as follows:
25
26

Event	Current Deadline	Proposed Deadline
Parties' deadline to complete the current phase of third-party fact discovery	August 1, 2024	August 1, 2024 (unchanged)
Plaintiffs' deadline to identify the class definition or definitions for which they intend to seek certification (through an amended complaint or supplemental interrogatory responses)	N/A	August 8, 2024
Parties' deadline to file a joint stipulation proposing deadlines for (i) AWS to conduct party and third-party fact discovery related to AWS's class certification defenses and Plaintiffs' August 8 class definition or definitions and for Plaintiffs to conduct third-party fact discovery related to AWS's class certification defenses and Plaintiffs' August 8 class definition or definitions; (ii) the Parties to complete expert discovery regarding class certification; and (iii) the Parties to complete class certification briefing	N/A	August 15, 2024
AWS's expert disclosures regarding class certification issues	September 9, 2024	Stayed pending the Parties' joint stipulation proposing deadlines
Plaintiffs' rebuttal expert disclosures regarding class certification issues	November 4, 2024	Stayed pending the Parties' joint stipulation proposing deadlines

Completion of expert discovery regarding class certification issues	December 9, 2024	Stayed pending the Parties' joint stipulation proposing deadlines
Deadline to file <i>Daubert</i> motions regarding class certification experts	January 27, 2025	Stayed pending the Parties' joint stipulation proposing deadlines
Plaintiffs' deadline to file motion for class certification	January 27, 2025	Stayed pending the Parties' joint stipulation proposing deadlines
Defendant's deadline to respond to motion for class certification	March 3, 2025	Stayed pending the Parties' joint stipulation proposing deadlines
Reply in support of class certification	March 24, 2025	Stayed pending the Parties' joint stipulation proposing deadlines
Parties' deadline to file joint status report to propose post-class certification deadlines	Fourteen (14) days after Court's ruling on motion for class certification	Fourteen (14) days after Court's ruling on motion for class certification (unchanged)

WHEREFORE, the Parties respectfully request that the Court enter an order modifying the current case deadlines in accordance with this Stipulated Motion.

1 Dated: July 25, 2024

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LCR 7(e) Certification

19 I certify that this memorandum contains 1345 words, in compliance with the Local Civil
20 Rules.

21 s/ Ryan Spear

ORDER

IT IS SO ORDERED.

DATED this 25th day of July, 2024.

A handwritten signature in cursive script, reading "John H. Chun", is written over a horizontal line.

JOHN H. CHUN
UNITED STATES DISTRICT JUDGE